United Nations A/61/722

General Assembly

Distr.: General
30 January 2007

Original: English

Sixty-first session
Agenda item 67
Promotion and protection of human rights

Note verbale dated 25 January 2007 from the Permanent Mission of Moldova to the United Nations addressed to the Secretary-General

The Permanent Mission of the Republic of Moldova to the United Nations presents its compliments to the Secretary-General of the United Nations and, with reference to the letter of the Secretary-General of the Council of Europe, Mr. Terry Davis, addressed to the Secretary-General of the United Nations dated 11 December 2006 concerning the failure of the Russian Federation to execute the decision of the European Court for Human Rights in case of a group of Moldovan citizens, would kindly like to ask you to circulate, under item 67 of the agenda of the sixty-first session of the General Assembly, the text of interim resolution RedDH(2006)26, adopted by the Committee of Ministers of the Council of Europe and mentioned in the letter of the Secretary-General of the Council of Europe. The text of the above-mentioned interim resolution (see annex I) and the explanatory memorandum (see annex II) to the interim resolution are attached to the present note.

07-22538 (E) 310107

Annex I to the note verbale dated 25 January 2007 from the Permanent Mission of Moldova to the United Nations addressed to the Secretary-General

COUNCIL OF EUROPE
COMMITTEE OF MINISTERS

Interim Resolution ResDH(2006)26
concerning the judgment of the European Court of Human Rights
of 8 July 2004 (Grand Chamber)
in the case of Ilaşcu and others against Moldova and the Russian Federation

(Adopted by the Committee of Ministers on 10 May 2006
at the 964th meeting of the Ministers' Deputies)

The Committee of Ministers,

Having regard to the judgment of the European Court of Human Rights of 8 July 2004 in the case of Ilaşcu and others against Moldova and the Russian Federation, in which the Court held that the two respondent states are to take all necessary measures to put an end to the arbitrary detention of the applicants still imprisoned and to secure their immediate release;

Stressing that, in this judgment, the Court stated that "any continuation of the unlawful and arbitrary detention of the [...] applicants would necessarily entail [...] a breach of the respondent states' obligation under Article 46 § 1 of the Convention to abide by the Court's judgment";

Reiterating that the obligation to abide by the judgments of the Court is unconditional and is a requirement for membership of the Council of Europe;

Deeply deploring the fact that two applicants, Mr Ivanţoc and Mr Petrov-Popa, are still imprisoned, and stressing that the excessive prolongation of their unlawful and arbitrary detention fails entirely to satisfy the requirements of the Court's judgment and the obligation under Article 46, paragraph 1, of the Convention;

Noting that the authorities of the Republic of Moldova have regularly informed the Committee of the steps they have taken to secure the applicants' release;

Regretting profoundly that the authorities of the Russian Federation have not actively pursued all effective avenues to comply with the Court's judgment, despite the Committee's successive demands[1] to this effect,

Encourages the authorities of the Republic of Moldova to continue their efforts towards putting an end to the arbitrary detention of the applicants still imprisoned and securing their immediate release;

Declares the Committee's resolve to ensure, with all means available to the Organisation, the compliance by the Russian Federation with its obligations under this judgment;

Calls upon the authorities of the member states to take such action as they deem appropriate to this end.

Note [1] Interim Resolutions ResDH(2005)42 of 22 April 2005, ResDH(2005)84 of 13 July 2005 and ResDH(2006)11 of 1 March 2006.

Annex II to the note verbale dated 25 January 2007 from the Permanent Mission of Moldova to the United Nations addressed to the Secretary-General

Explanatory memorandum

to the Interim Resolution ResDH(2006)26 concerning the judgment of the European Court of Human Rightsof 8 July 2004 (Grand Chamber) in the case of Ilaşcu and others against Moldova and the Russian Federation, adopted by the Committee of Ministers on 10 May 2006 at the 964th meeting of the Ministers' Deputies

The case concerns events occurring in the so called "Moldavian Republic of Transdniestria" ("the MRT"), a region of Moldova known as Transdniestria, which declared its independence in 1991 but is not recognised by the international community. It concerns the unlawful detention of the four applicants, following their arrest in 1992 and subsequent trial by the "Supreme Court of the MRT", and the ill treatment inflicted on them during their detention.

As regards the responsibility of Moldova, the Court found (paragraphs 330 to 335 of the judgment) that:

> "330. ...the Moldovan Government, the only legitimate government of the Republic of Moldova under international law, does not exercise authority over part of its territory, namely that part which is under the effective control of the 'MRT'. ...
>
> 331. However, even in the absence of effective control over the Transdniestrian region, Moldova still has a positive obligation under Article 1 of the Convention to take the diplomatic, economic, judicial or other measures that it is in its power to take and are in accordance with international law to secure to the applicants the rights guaranteed by the Convention. ...
>
> 335. Consequently, the Court concludes that the applicants are within the jurisdiction of the Republic of Moldova for the purposes of Article 1 of the Convention but that its responsibility for the acts complained of, committed in the territory of the 'MRT', over which it exercises no effective authority, is to be assessed in the light of its positive obligations under the Convention."

As regards the responsibility of the Russian Federation, the Court concluded (paragraph 382 of the judgment) that:

> "the authorities of the Russian Federation contributed both militarily and politically to the creation of a separatist regime in the region of Transdniestria, which is part of the territory of the Republic of Moldova[, and] that even after the ceasefire agreement of 21 July 1992 the Russian Federation continued to provide military, political and economic support to the separatist regime..., thus enabling it to survive by strengthening itself and by acquiring a certain amount of autonomy vis-à-vis Moldova."

It further noted (paragraphs 392 to 394 of the judgment) that both before and after 5 May 1998 (the date of the ratification of the Convention by the Russian Federation):

"392. ...the 'MRT'... remains under the effective authority, or at the very least under the decisive influence, of the Russian Federation, and in any event...it survives by virtue of the military, economic, financial and political support given to it by the Russian Federation.

393. That being so, the Court considers that there is a continuous and uninterrupted link of responsibility on the part of the Russian Federation for the applicants' fate, as the Russian Federation's policy of support for the regime and collaboration with it continued beyond 5 May 1998, and after that date the Russian Federation made no attempt to put an end to the applicants' situation brought about by its agents, and did not act to prevent the violations allegedly committed after 5 May 1998. ...

394. In conclusion, the applicants therefore come within the 'jurisdiction' of the Russian Federation for the purposes of Article 1 of the Convention and its responsibility is engaged with regard to the acts complained of."

The main point of the judgment is the applicants' deprivation of liberty. The Court found that none of the applicants had been convicted by a "court" within the meaning of Article 5. Furthermore, a sentence of imprisonment passed by a judicial body such as the "Supreme Court of the MRT" at the close of proceedings like those conducted in the present case could not be regarded as "lawful detention" ordered "in accordance with a procedure prescribed by law".

Furthermore, the Court held, unanimously, that "the respondent states [were] to take all necessary measures to put an end to the arbitrary detention of the applicants still imprisoned and secure their immediate release" (paragraph 22 of the operative part of the judgment). Moreover, it emphasised the urgency of this measure in the following terms (paragraph 490):

"any continuation of the unlawful and arbitrary detention of the...applicants would necessarily entail a serious prolongation of the violation of Article 5 found by the Court and a breach of the respondent states' obligation under Article 46§1 of the Convention to abide by the Court's judgment."

To date, only two of the four applicants have been released. Mr Ilaşcu was released in May 2001 (as noted by the Court) and Mr Leşco at the expiry of the sentence imposed on him by the "Supreme Court of the MRT", on 2 June 2004.

The other two applicants, Messrs Ivanţoc and Petrov-Popa, are still imprisoned.